

## MEDICAL JURISPRUDENCE†

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San Francisco

### Malpractice: Necessity for Proof as to Person Causing Injury

In *Ybarra v. Spangard*, 63 A.C.A. 626, the facts were these: Suffering from an abdominal ache, the plaintiff had consulted one of the defendant physicians who advised him that he should have his appendix removed and entered him in a hospital owned and managed by a second physician, also one of the defendants in the action. Here a nurse, unidentified by the plaintiff, gave him a hypodermic injection and readied him for the operation. He was wheeled into the operating room by a third defendant, a nurse employed at the hospital. The fourth defendant in the action, a physician, helped adjust the plaintiff on the operating table, and administered the anesthetic. A fifth defendant, another physician and surgeon, performed the operation at the request of the physician first consulted by plaintiff. When the plaintiff awakened some few hours after the operation, he was in bed in his hospital room attended by two nurses. Up to the time plaintiff entered the hospital, he had suffered no injury to his upper arm. However, when he regained consciousness after the operation, he had a pain in his shoulder, due to the fact, according to expert testimony adduced at the trial of the case on behalf of plaintiff, that a nerve had been injured by the application of some external pressure or strain.

Plaintiff relied upon the doctrine of *Res Ipsa Loquitur* (the thing speaks for itself) to make out his case. That is by proving that he suffered injury sometime after he placed himself in the hands of the defendant physicians and nurse, plaintiff sought to impose the burden upon the defendants of explaining the manner in which the alleged injury occurred. The Court refused to extend the doctrine of *Res Ipsa Loquitur* to a case such as this where plaintiff failed to fix the injury as having been caused by a particular person or his employee. The Court said "But if the circumstances do tell their own tale, the most that they relate is that someone did something negligently to the plaintiff. If all those who could have pressed upon him during the period of his unawareness were the employees of any one defendant, that defendant might be held responsible for plaintiff's injuries, but even that was not established. . . . Who, if anyone, stood as an employer, responsible for the possible negligence of nurse Thomson, is not made to appear. Granting that something happened to the plaintiff between the sunset and the sunrise of his consciousness, who caused it, is veiled in the darkness of an

utter lack of evidence. None of the defendants were called to testify; no one revealed whose hands moved the plaintiff from the operating table to his bed. In the premises, a judgment against any one defendant would have lacked evidentiary support. As to each defendant a non-suit was required."

The Court therefore affirmed the judgment of non-suit in favor of the defendant physicians and denied plaintiff recovery.

## LETTERS †

### Concerning Venereal Disease Control Program of San Francisco:

(COPY)

CITY AND COUNTY OF SAN FRANCISCO

Department of Public Health

San Francisco, May 23, 1944.

*To the Editor:*—Enclosed please find an announcement which it was thought should be printed in the monthly bulletin of the CALIFORNIA AND WESTERN MEDICINE.

The action of the Metal Trades Council, of the American Federation of Labor, in passing a unanimous resolution approving the voluntary preemployment blood tests which are conducted by management in coöperation with health departments, is a definite forward step in local venereal disease control. Information regarding the results of these serologic examinations is kept strictly confidential between the health department and the individual examined. The results of these serologic examinations are not reported to either labor unions or management.

Failure on the part of the employee to submit to voluntary preemployment blood examination will not jeopardize his chances of employment.

101 Grove Street.

Sincerely,

(Signed) J. C. GEIGER, M. D., Director.

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Dr. J. C. Geiger, Director of Public Health, announces a new procedure in the Industrial Venereal Disease Control Program of San Francisco. The Bay Area Metal Trades Council, of the American Federation of Labor, unanimously passed a resolution approving voluntary preemployment of serologic examinations which are conducted by management in coöperation with health departments.

Under the operation of this program voluntary preemployment serologic specimens will be secured by medical representatives of management. These specimens will be submitted to the laboratory of the City and County of San Francisco Department of Public Health. The results of these laboratory findings are referred to the Division of Venereal Diseases of the local Department of Public Health. Information is kept strictly confidential between the Health Department and the individual blood tested. Information pertaining to the results of these examinations is reported neither to labor unions nor to management.

The Division of Venereal Diseases assumes responsibility of advising employees of positive serologic examinations. Industry is advised that it is not justified in considering the presence of syphilis in an employee under treatment or adequately treated as a cause for discharge from employment. Such an attitude is detrimental to the war effort, a hindrance to the progressive industrial venereal disease control, and leads to plant management-labor union conflict.

Latent syphilis is not a danger to industry. It is neurosyphilis and cardiovascular syphilis, the results of latent syphilis, which present the potential industrial hazard.

† CALIFORNIA AND WESTERN MEDICINE does not hold itself responsible for views expressed in articles or letters when signed by the author.

† Editor's Note.—The department of CALIFORNIA AND WESTERN MEDICINE, presenting copy submitted by Hartley F. Peart, Esq., will contain excerpts from the syllabi of recent decisions and analyses of legal points and procedures of interest to the profession.